

**Santa Clara County Pesticide Enforcement
Work Plan for Calendar Years 2009-2011**

**Santa Clara County Division of Agriculture
Pesticide Use Enforcement Program**

Purpose

The purpose of this work plan is to describe the Division of Agriculture's Pesticide Use Enforcement Program for 2009 – 2011 by focusing on the following components: program overview, resources, corrective actions, core program priorities, and desirable activities.

Section 1 -- Program Overview

The Division of Agriculture serves as the principal local agency responsible for regulating the use of all pesticides, such as insecticides, herbicides, fungicides, sanitizers, and disinfectants. Through this activity, the Division strives to safeguard public health and protect the environment of Santa Clara County.

The Division:

- regulates the use, storage and disposal of pesticides by farmers, pest control companies, government, industry and the general public;
- investigates suspected pesticide-related illnesses and complaints alleging pesticide misuse;
- enforces regulations protecting workers handling pesticides;
- inspects and monitors pesticide applications in Santa Clara County.

Program Changes

Santa Clara County participates in the Structural Fumigation Enforcement Program and, as such, performs an increased level of structural pesticide enforcement. This program is funded by registered Branch 1 structural pest control companies who pay a \$5.00 fee for each structure fumigated in Santa Clara County.

The Division of Agriculture assigned each agricultural biologist to a new geographic region. The reassignment is intended to broaden staff's experiences, provide new challenges and ensure uniformity in both inspection and enforcement activities.

The Division of Agriculture is reorganizing its management structure following the recent retirement of a deputy agricultural commissioner. The new management team intends to continue to deliver an efficient and effective pesticide enforcement program, despite potentially significant fiscal challenges which are anticipated in 2009-2011.

**Santa Clara County Pesticide Enforcement
Work Plan for Calendar Years 2009-2011**

Section 2 - Resources

Personnel

- 1 - Agricultural Commissioner (part-time PUE responsibilities)
- 2 - Deputy Agricultural Commissioners (part-time PUE responsibilities)
- 1 - Supervising Agricultural Biologist (part-time PUE responsibilities)
- 10 - Agricultural Biologists (part-time PUE responsibilities)
- Anticipated PUE Hours per Year: 13,000 (Licensed)
 2,600 (Support)
 15,600 (Total)

Facilities / Equipment / Resources (Rounded)

- Two Division offices:
 - San Jose HQ - 5 PUE Agricultural Biologists
 - Morgan Hill - 5 PUE Agricultural Biologists
- Each staff member is assigned an individual vehicle, networked computer workstation, portable tablet PC, digital camera and cell phone.
- ArcGIS 9.3 (12 licenses)
- Trimble GeoXM GPS (2 units)
- Interscan (sulfuryl fluoride) detection unit
- The Spectros SF-ExplorIR (sulfuryl fluoride) detection unit
- TIFF Detector
- Fumiguide Calculator
- Draegar Pump
- Garmin GPS (2 units)

PUE Workload (FY2007-2008)

- Number of Pest Control Businesses Operating in County: 433
- Number Operator Identification Numbers issued: 261
- Number Restricted Material Permits issued: 200
- Number of agriculture sites: 1401
- Number of Notice of Intents received: 1539
- Number of pesticide investigations conducted: 43
- Number of pesticide inspections performed: 466
- Agricultural Civil Penalty actions: 11
- Structural Civil Penalty actions: 7

Projected PUE Staffing / Workload

Pesticide workload is expected to remain at the FY2007-2008 levels. PUE staffing will decline should the Division experience reductions in State or local fiscal support.

**Santa Clara County Pesticide Enforcement
Work Plan for Calendar Years 2009-2011**

Section 3 – Corrective Actions

The Department of Pesticide Regulation recently conducted a Performance Evaluation Report of Santa Clara County's 2007/2008 pesticide regulatory program. DPR's report states that no corrective actions are currently needed to Santa Clara County's program.

Section 4 – Core Program Priorities

Part A: Restricted Materials Permitting

Permit Issuance Work Plan

Permit evaluation and issuance begins by the assignment of an individual Agricultural Biologist to the applicant company. This procedure allows for better customer service, enhanced environmental protection and accountability from the initial permit evaluation phase through application and ultimately, use report submission.

Only qualified / licensed biologists and managers are authorized to issue restricted material permits. By policy, Santa Clara County issues restricted material permits only for a one-year period. Restricted Materials permits expire on December 31 each year.

During the fall of each year, in preparation for the upcoming growing season, current holders of restricted materials permits are sent a notification letter and Operator Identification / RM Permit Renewal Application. Concurrently, the Division reviews its GIS-based site maps to ensure accuracy and for identification of sensitive areas. Growers complete and submit their permit applications to the Division. An Agricultural Biologist reviews each submitted application for completeness, proposed pesticide usage, potential impacts on endangered species and other sensitive areas. Printed site maps are adjusted as necessary and forwarded to the Division's GIS biologist for updating in ArcGIS 9.3. Biologists make field / site visits for evaluation of site changes and sensitive areas as appropriate.

Historically, the Division denies approximately 45 to 65 requests for restricted material permits each year. Permit denials occur when the applicant fails to demonstrate a legitimate need for the restricted material, when hazards cannot be adequately mitigated, and when a determination is made that the applicant failed to comply with Notice of Intent or use reporting requirements during the previous year.

In certain use settings, restricted material permits are conditioned with DPR-supported permit conditions should it be determined that greater protection is needed. Any change of site conditions occurring subsequent to permit issuance will trigger further site/use evaluation prior to approval of a submitted Notice of Intent. If this further evaluation determines an unacceptable increase in either an environmental or health hazard, the Notice of Intent will be denied.

Santa Clara County Pesticide Enforcement Work Plan for Calendar Years 2009-2011

Restricted materials permit holders seeking to amend a current permit must contact the appropriate Division office. In some instances, minor permit amendments are allowed by fax. In all cases, amended permits are updated in the computer files and noted in the file folder by dating and signing the change or reprinting the updated Restricted Material Permit.

The Santa Clara County Division of Agriculture has met or exceeded California Department of Pesticide Regulation's criteria for permit evaluation and issuance in all audits and evaluations performed over the past ten years.

Site Evaluation Work Plan

As a component of its Restricted Materials Permitting program, the Division considers the pesticide intended for use and the sensitive nature of the surrounding areas to determine the need for both preapplication site inspections and application inspection monitoring. Materials such as fumigants, category 1 liquid restricted materials, and aerial applications are most likely to be evaluated both as preapplication site inspections and on-site pesticide monitoring inspections. Factors triggering increased monitoring include the use of highly toxic or environmentally sensitive materials, pesticides with the potential for off-site movement, and/or when the use poses a threat to the safety of workers.

Notices of Intents (NOI) are received by phone, fax or in person in either Division office. The Office Duty Biologist reviews submitted NOIs and directs the NOI to the appropriate district biologist for further review. The district biologist reviews the NOI for required information and then reviews the Restricted Materials Permit and associated maps for compliance. Based on this review, the application will be either approved or denied.

Santa Clara County conducts preapplication site inspections on greater than 5% of the sites named in Notices of Intents received by the Division. These inspections are conducted using the potential for increased hazards as the primary criteria for conducting the evaluation.

Santa Clara County also conducts a minimum of one use monitoring inspection for each non-agricultural permit issued. By policy, the Division refuses to issue Restricted Material Permits for home use.

The Santa Clara County Division of Agriculture has met or exceeded California Department of Pesticide Regulation's criteria for site monitoring in all audits and evaluations performed over the past ten years.

Restricted Materials Permitting Goals/Outcomes for Fiscal Year 2009-2011

- 1) Continue the use of GIS in the restricted materials planning and permitting process. This goal includes ensuring timely updates of the site map database and further enhancement of existing data layers as they pertain to pesticide use. The increased use of the GIS technology will allow staff to better document potential pesticide use sites. Further, GIS will provide for quick identification of sensitive

Santa Clara County Pesticide Enforcement Work Plan for Calendar Years 2009-2011

locations adjacent to proposed use sites, thus allowing for the application of efficient and effective mitigation measures.

- 2) Continue to encourage the use of web-based RMMS to allow grower/PCO permit access via the internet. Deployment of RMMS on the internet will offer significant increases in efficiency for both the public and Division users. Permittees will have access to their permit records via the internet and will be able to submit pesticide use reports electronically. This goal should increase grower compliance with pesticide use reporting requirements due to the ease of submission. Electronically submitted reports will be automatically checked for accuracy, thereby significantly reducing the data entry/record review work performed by Division biologists and support staff.

Private Applicator Certification Evaluation

Only qualified applicants are allowed to take the Private Applicator Certification exam. Qualification assessment is accomplished by matching the applicant's qualifications to the standards contained in 3CCR Section 6000. In select cases, a grower's employee may be allowed to take the private applicator test.

Applicants schedule an examination appointment and complete the DPR-approved Private Applicator Certification Application or renewal form. A licensed agricultural biologist proctors the exam and scores the test. Applicants passing the exam are issued a private applicator certificate card. Applicants who are unsuccessful in passing the exam are given an opportunity to retake the test after waiting the required seven days.

Santa Clara County participates with other local organizations, such as the University of California Cooperative Extension and the Farm Bureau, in providing seminars and training sessions to allow growers the opportunity to earn continuing education credits for renewal of their private applicator certification.

Part B: Compliance Monitoring

Pesticide Use Monitoring Inspections Evaluation

Santa Clara County performs over 400 pesticide use-related inspections per year. These inspections are performed by appropriately licensed and trained Agricultural Biologists.

In July 2006, biologists began performing inspections utilizing the AIRS inspection program on tablet PCs. As with the written inspections, non-compliances noted during any inspection are documented and described on each inspection form. When appropriate, biologists take digital photographs to further document their observations.

The inspecting biologist is responsible for tracking the compliance history of the individuals and businesses inspected. A Supervising Agricultural Biologist or Deputy Agricultural Commissioner reviews all completed inspection reports. When

Santa Clara County Pesticide Enforcement Work Plan for Calendar Years 2009-2011

noncompliances are noted on inspection reports, the inspecting biologist and the supervisor review the enforcement response guidance to determine the appropriate action.

Inspections with non-compliances that could not be corrected at the time of inspection require a follow-up inspection. Each Agricultural Biologist assigned pesticide enforcement responsibilities maintains file copies of all completed inspections in "District Binders". Inspection logs documenting inspections with non-compliances requiring follow-up are also maintained in these binders. It is the responsibility of the inspecting biologist to review the District Binder to track and schedule follow-up inspections. Completed follow-up inspections are noted on the follow-up inspection log.

Pesticide Use Reporting System Evaluation

Santa Clara County issues operator identification numbers according to Department of Pesticide Regulation policies and requirements. The Division employs the RMMS Operator I.D./Restricted Material Permit System. Property operators are evaluated for the pesticide products they intend to use. If no restricted materials are to be used, then an Operator Identification Number is issued for all agricultural uses. For those operators requiring a Restricted Material Permit, the Permit Number also serves as the Operator Identification number.

Each production agricultural application site where pesticides are to be applied is issued a unique site identification number using the policies described by the DPR. As previously mentioned, Santa Clara County employs a Geographic Information System (GIS) using the County-supported GIS parcel layer for plotting pesticide use sites. Current aerial imagery is used as an overlay map to assist in digitizing site polygons.

Santa Clara County follows DPR guidelines in issuing specific site numbers dependent upon ownership and crop. A change in property operator results in the generation of a new and distinct Permit /Operator I. D. and Site I. D. number combination for the site.

Pesticide use reports are reviewed for timeliness. When a pesticide user shows a history of late submissions or reporting failures, appropriate compliance and/or enforcement action is initiated. The enforcement response regulation is followed when determining the appropriate action for late use reporting violations.

Only licensed biologists review submitted pesticide use reports. Very few use reports are returned to the Division by DPR for correction. When errors are detected, the appropriate district biologist contacts the reporting party and ensures correction of the problem.

County Registration/Notification of Licensee Evaluation

Santa Clara County employs a robust registration/notification system. Each November, the Division sends notification letters to all of the previous year's registrants, including structural licensees. An application for the following year is enclosed to facilitate the registration/notification process. Santa Clara County usually accepts registrations for the next calendar year during the month of December.

Santa Clara County Pesticide Enforcement Work Plan for Calendar Years 2009-2011

The Santa Clara County Division of Agriculture has met or exceeded DPR's evaluation criteria for Compliance Monitoring in all audits and evaluations performed over the past ten years.

Compliance Monitoring Goals/Outcomes

- 1) As a minimum standard, perform an inspection visit for each commercial pesticide user / grower operation in Santa Clara County every 3 years. By ensuring contact on a regular basis, pesticide users will maintain an awareness of the regulatory presence, know whom to contact for regulatory questions, and understand they are subject to compliance inspections. The following factors may result in an increased inspection frequency:
 - Sensitive sites
 - Use of restricted materials
 - Large numbers of applicators or field employees
 - Field fumigations, aerial applications, and chemigations
 - Compliance history
- 2) Continue to promote the submission of pesticide use reports via RMMS web application.
- 3) Continue to perform additional structural fumigation enforcement activities using the funding generated by the \$5.00 fee per fumigation received from structural businesses.
- 4) Continue to monitor pesticides applied via chemigation. This goal is intended to ensure growers conduct chemigation activities in an appropriate manner in order to protect local groundwater resources.
- 5) To ensure ongoing proficiency, Biologists will continue to be cross-trained within the various facets of the PUE program (agricultural use v. structural use). Cross-training ensures a competent and professional staff and increases departmental efficiency by maximizing flexibility in inspection assignments.

Investigation Response and Reporting Evaluation

The Santa Clara County Division of Agriculture performs approximately 45 pesticide related investigations per year. The Division has consistently met or surpassed the DPR performance standards for investigation quality.

All Division staff responsible for conducting pesticide-related investigations are appropriately licensed and attend appropriate DPR-sponsored training. PUE staff also receive regular training through staff meetings and other participatory training opportunities.

Santa Clara County Pesticide Enforcement Work Plan for Calendar Years 2009-2011

The Division responds to and documents all reported complaints and incidents involving pesticides. This documentation includes a complaint / illness tracking system to help ensure complaints are acted upon and investigations completed in a timely manner.

Over the past several years, the Division has referred investigations to DPR, Fish and Game, Cal-OSHA, District Attorney and local law enforcement agencies. The Division has a policy of encouraging staff to contact outside agencies when it will facilitate the completion or proper referral of an investigation.

Santa Clara County relies on the investigative training provided by DPR. This includes the written policies and procedures provided in the manuals developed by DPR. Such written material includes the "Pesticide Episode Investigation Procedures Manual" and the "Pesticide Enforcement Investigative Sampling Manual". Continued training opportunities for new, as well as experienced, biologists are encouraged and supported by the Division.

Santa Clara County, by developing a very specific Investigative Report format, has institutionalized the collection and recording of information needed to provide a complete and thorough investigation. This includes complainant interviews, witness statements and other pertinent information. To ensure accurate investigations and to protect confidentiality, the Division routinely conducts employee interviews in private. When confronted with a language barrier, the Division utilizes bilingual County interpreters. Investigative Reports also provide proper reference to pesticides, EPA registration numbers and specific equipment used pertinent to the event under investigation. All Investigative Reports conclude with a listing of findings or "violation elements" supporting any identified violation.

Santa Clara County's Investigative Report format has been acknowledged by DPR for its excellence in ensuring complete and thorough investigative reports.

The Santa Clara County Division of Agriculture has met or exceeded DPR's evaluation criteria for Investigation Response and Reporting in all audits and evaluations performed over the past ten years.

Investigation Response and Reporting Goals/Outcomes

- 1) Ensure each biologist remains proficient in preparing investigative reports.
- 2) Ensure investigative reports are thorough, accurate and complete.

These goals are intended to ensure investigations are conducted in a timely and effective manner.

**Santa Clara County Pesticide Enforcement
Work Plan for Calendar Years 2009-2011**

Part C: Enforcement Response

Enforcement Response and Actions Evaluation

The Santa Clara County Division of Agriculture employs systematic procedures for ensuring appropriate enforcement response for all pesticide violations and is committed to following the enforcement response regulation. The Division utilizes the full array of compliance and enforcement options when addressing violations. The Division's philosophy is to educate offenders as to the proper performance standards and to employ effective follow-up and surveillance measures to ensure future compliance.

Minor and/or first-time offenders are issued a Violation Notice for their offense and receive direct one-on-one education from a PUE biologist. First-time offenders receive enforcement response as appropriate per the enforcement response regulation.

Non-compliances are currently tracked manually. In an effort to increase efficiency, the Division is continuing to explore the use electronic tracking options, including modification of the AIRS database.

Pursuant to the enforcement response regulation, the Division, when appropriate, will utilize a Decision Report to document the Commissioner's decision not to take an enforcement action.

The first occurrence of a "Serious" or "Class A" level violation results in consultation with the District Attorney. Outcomes include civil or criminal prosecution by the District Attorney or the assessment of an administrative civil penalty.

Santa Clara County employs a Penalty Assessment Guide in conjunction with the enforcement response regulation to ensure fair and consistent application of penalty actions. The Division routinely confers with the District Attorney's Environmental Crimes Unit on cases meriting District Attorney involvement. Additionally, the Division participates and routinely attends the District Attorney's enforcement meetings.

Audits performed by CDPR show that the Division routinely meets or exceeds all evaluation criteria for Enforcement Response and Actions.

Enforcement Response and Actions Goals/Outcomes

- 1) Maintain a close and effective working relationship with the Santa Clara County District Attorney's Environmental Crimes Unit. This goal is intended to maintain District Attorney awareness of the Division's investigations and ensure appropriate enforcement response for violators of pesticide laws and regulations.
- 2) Ensure biologists and managers remain proficient with the administrative civil penalty process. This goal is intended to ensure enforcement actions are initiated

**Santa Clara County Pesticide Enforcement
Work Plan for Calendar Years 2009-2011**

and conducted in a professional, appropriate and effective manner, thereby maintaining the integrity of the administrative penalty process.

- 3) Balance the level of enforcement response with staff resources.

Section 5 – Desirable Activities

Additional Activities

Outreach and Education

The Santa Clara County Division of Agriculture strives to ensure the regulated community is informed of and understands compliance standards as they relate to the use of pesticides. Towards this end, outreach and education activities are important elements of Santa Clara County's pesticide enforcement program. The Division anticipates expending approximately 300 hours towards this endeavor.

As staff resources allow, the Division will continue to prepare and distribute educational newsletters to targeted groups, including structural fumigators, pest control operators, and growers. The Division will continue to provide newsletters to other counties and DPR.

The Division sponsors and conducts multiple training seminars for growers and licensees. To ensure information reaches targeted communities, select presentations are translated into Spanish and Cantonese. Division biologists and managers also participate as presenters at training opportunities sponsored by industry and by other governmental agencies.

Pesticide Container Recycling Program

In cooperation with the Santa Clara County Department of Environmental Health, the Division intends to continue operating the pesticide container recycling program established in 2008.

The recycling program accepts rinsed high-density polyethylene (HDPE) pesticide containers at a designated site in southern Santa Clara County. The program also accepts 5-gallon buckets and lids, and 35-gallon or 55-gallon plastic barrels which have been properly prepared.